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October 3, 1994

RECEIVED
OCT -4 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

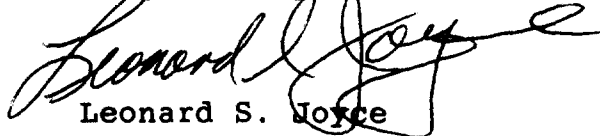
Re: MM Docket No. 94-86
RM 8497

Dear Mr. Caton:

Forwarded herewith are the original and four copies of
Terry A. Cowan's Reply Comments in the above referenced FM Rule
Making Proceeding for Klamath Falls, Oregon.

Should there be any questions concerning this matter,
please communicate directly with the undersigned.

Very truly yours,


Leonard S. Joyce

Enclosure

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List ABCDE

4

DOCKET FILE COPY ORIGINAL
Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

ORIGINAL

In the Matter of)
)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Klamath Falls, Oregon))

MM Docket No. 94-15

RM-8497

RECEIVED

OCT -4 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Reply Comments of Terry A Cowan

Terry A. Cowan (Petitioner), by and through his undersigned counsel, files the following Reply Comments in the above-captioned proceeding.

Preliminary Statement

1. By "Notice of Proposed Rule Making" (Notice) in this proceeding, DA94-793, released July 27, 1994, and in response to a Petition for Rule Making, filed by Petitioner, the FCC proposed to add to its FM Table of Allotments, Channel 284C1 to the community of Klamath Falls, Oregon, noting that such an allotment would serve the public interest since it would provide that community with wide area FM service and be in compliance with the FCC's minimum distance separation requirements without the imposition of a site restriction.

2. In response to that Notice Petitioner filed supporting Comments, committing to promptly file for the proposed allotment and, if granted, promptly construct and commence operation.

3. The only other Comments herein, were filed by Western States Broadcasting Inc. (WSB) and styled "Opposition to Rulemaking and Counter-Proposal". WSB opposes assignment of Channel 284C-1 to Klamath Falls, and requests rather that Channel 284C-1 be assigned to Altamont, Oregon and that WSB's construction permit for Channel 249C-1 at Altamont, Oregon be modified for operation on Channel 249C-2 at Butte Falls, Oregon.

4. As will be established below, WSB's Counter-Proposal must be rejected. It is not bona-fide and represents an abuse of the FCC's processes. To properly evaluate the WSB Counter-Proposal, certain background information respecting WSB is necessary and is set-forth hereinafter.

Background Information Respecting WSB

5. As stated by WSB at the second paragraph of page 1 of its Opposition and Counterproposal, herein, WSB is the licensee of Station KWSA(AM) West Klamath Falls, Oregon and permittee of Station KCHQ(FM) at Altamont, Oregon "currently assigned to FM Channel 249C-1". While technically correct, this statement is misleading for (1) both those Stations have been silent for many months due to technical and severe financial problems and (2) although Station KCHQ(FM)'s construction permit was modified by the FCC to operate on Channel 249C-1, and while, in 1992, WSB was ordered to file application for Channel 249C-1, it has never done so, and prior to going silent, KCHQ(FM) operated on Channel 267C (with reduced facilities). Each of these facts will be treated in turn, infra.

6. Concerning the silence of Stations KWSA(AM) and KCHQ(FM), there is attached hereto, as Appendix A, the March

22, 1994 letter of WSB, addressed to the FCC advising that those Stations "remain off-the-air at this time"^{1/}; that the exact date of the return to air for these Stations remains unknown; and that WSB remains optimistic that the Stations will return to the air in the near future. Apparently, this March 22, 1994 letter was treated separately by the AM and FM Branches of the FCC. After further correspondence, the AM Branch, on June 23, 1994 granted a three month extension of time for KWSA(AM) to remain silent. (See Appendix B attached hereto). Prior to that, on May 20, 1994, the FCC's FM Branch wrote WSB concerning both KCHQ(FM) and KWSA(AM) noting the FCC's Rules and procedures concerning requests to go and remain silent (not followed by WSB); requesting clarification concerning the necessity for the stations to remain silent; and, requested WSB to outline the steps proposed to resolve the station's problems (See Appendix C attached hereto). Despite the fact that the FM Branch's May 20, 1994 letter requested a reply within 30 days, WSB did not respond until July 29, 1994. A copy of WSB's July 29, 1994 letter response is attached hereto as Appendix D. It notes the June 23, 1994 AM Branch grant of a three month extension of time for KWSA(AM) to remain silent; submits an Anti-Drug Abuse Act Certification for KCHQ(FM); renews its request for authority for KCHQ(FM) to remain silent; and states that WSB's "severe financial problems" and "equipment problems" have prevented the resumption of broadcast

^{1/} It is on information and belief that both Station were silent from about three month before March, 1994.

operations. The three month extension of time for KWSA(AM) to remain silent has now expired and to Petition's knowledge the authority for KCHQ(FM) to remain silent has not been acted upon. Despite WSB's failure to follow the "letter of the law" concerning its requests to go and remain silent, it is upon Petitioner's information and belief that the FCC plans to extend the authority for KWSA(AM) to remain silent and grant KCHQ(FM) authority to remain silent, probably after receipt of further information from WSB. However, for the purposes of these Reply Comments, Petitioner has attached Appendices A through D in order to establish that WSB, because of "severe financial problems" and "equipment problems", has been unable to return Stations KWSA(AM) and KCHQ(FM) to the air, and, Petitioner's counsel has been advised by FCC personnel that FCC records show that both Stations remain off the air as of October 3, 1994.

7. Concerning KCHQ(FM)'s modification for operation on Channel 249C-1 at Altamont, Oregon, the following facts are pertinent. By Report and Order, DA92-909, released July 23, 1992, 7 FCC Rcd 4599, the FCC modified the construction permit of Station KCHQ(FM) for operation on Channel 249C1, in lieu of Channel 267C and ordered WSB to file, within 90 days of September 8, 1992, an application (Form 301) for operation on Channel 249C-1. A search of the files of the FCC establishes that WSB has yet to file for Channel 249C-1 and that before KCHQ(FM) went silent, it operated on channel 267C (with reduced facilities). (Official Notice Requested). And this despite the fact that WSB instigated the Rule Making proceeding by

requesting a change in Channels for KCHQ(FM). Although WSB requested Channel 243C-1, in that Rule Making proceeding, to permit operation from a transmitter site at Chase Mountain, to the west of Altamont, the FCC assigned Channel 249C-1 (because of a counter-proposal) but noted that Channel 249C-1, like 243C-1, could be operated from a transmitter site at Chase Mountain (See DA92-909 referred to above).

Terry A Cowan's Reply

8. With this Background Information respecting WSB, an examination of WSB's counterproposal in this proceeding discloses it to be a sham. First, while WSB admits that it "has experience severe financial problems which have contributed to (its) inability to resume broadcast operations (of KWSA(AM) and KCHG(FM))" (See Appendix D, attached hereto), nevertheless it states in its subject counter-proposal that, if adopted, it will file application for Channel 284C-1 at Altamont and Channel 249C-2 at Butte Falls. To do so would involve very considerable expenses by WSB. The current fees for filing for Channel 284C-1 at Altamont would be a filing fee for FCC Form 301 of \$2,335 as well as an \$1,800 Rule Making Fee^{2/}, plus many thousands of dollars for the construction of a tower, purchase or lease of a transmitter site; purchase or lease of a studio; and, purchase or lease of a transmitter, antenna, and studio equipment. Since WSB proposes a modification of its KCHQ(FM) Construction Permit to change the community from Altamont to

^{2/} See Section 1.1104 of the FCC's Rules and Regulations.

Butte Falls, such would be a major not a minor change requiring a FCC Form 301 filing fee of \$2,335 as well as a Rule Making fee of \$1,800.2/ Also, at Butte Falls, a new transmitter site and studio would be required (purchase or lease) and its present equipment (with its problems) would have to be modified and/or supplemented. Combined, these very substantial costs (as well of costs to return Station KWSA(AM) to the air) simply cannot be met by WSB which admits to "severe financial problems" Therefore, it must be concluded that WSB's commitment to move KCHQ(FM) to Butte Falls and apply for Channel 284C-1 at Altamont are beyond the financial means of WSB and, therefore, patently unreliable, and, for this reason, alone, WSB's Counterproposal must be rejected. Second, more than two years ago WSB was ordered to file application for Channel 249C-1 at Altamont (supra). Yet it has not done so, to date. How then can the FCC rely upon WSB's commitment to file for Channel 249C-2 at Butte Falls even if it is assumed WSB has the money to do so? The answer is clear. It cannot rely on that commitment. Nor, for the same reason, can the FCC rely upon WSB's commitment to apply for Channel 284C-1 at Altamont. Third, WSB's counter-proposal is an abuse of the FCC's processes. Unwilling or unable to build Channel 249C-1 at Altamont, WSB, either to block Petitioner's proposal to allocate Channel 284C-1 to Klamath Falls and/or to excuse and delay building on Channel 249C-1 at Altamont, WSB proposes to move Channel 284C-1 to Butte Falls (as 249C-2), a community with the 1990 U.S. Census population of 252 persons, and replace Channel 249C-1 with Channel 284C-1 at Altamont. Such a

scheme is a patent attempt to abuse the FCC's processes. The FCC must not reward WSB's failure to build Channel 249C-1 at Altamont by permitting it to further delay building it by moving it to Butte Falls, especially when there is great doubt, based on WSB's history and financial condition, that WSB would build at Butte Falls. And WSB's discussion of Section 307(b) of the Communications Act, concerning need for service at Butte Falls and Altamont is a smoke screen. Butte Falls is little more than a cross roads place, and Altamont is an unincorporated suburb of Klamath Falls. And while the census bureau lists Altamont as a designated place with a population of approximately the same as the population within the city limits of Klamath Falls, Altamont was last treated as a separate entity in 1907. Today, Altamont is referred to by local residents as the "South Suburbs", (and part of Klamath Falls) with no Post Office and no governmental structure of its own (See the September 29, 1994 letter of Miranda Britton of the Klamath County Chamber of Commerce, attached hereto as Appendix E).

9. The premises considered, WSB Counter-proposal must be rejected as a private scheme by WSB having nothing to do with the public interest. The FCC should reject the WSB counter-proposal out-of-hand and insist that WSB construct Station KCHQ(FM) on Channel 249C-1, as ordered by the FCC more than two years ago, or, alternately, cancel the KCHQ(FM) construction permit if WSB does not build within a reasonable time, and delete Channel 249C-1 from the FM Table of Allotments.

Wherefore, in view of the foregoing, (1) the FCC's Notice should be adopted, in which case Petitioner shall apply for Channel 284C-1 at Klamath Falls, and, if granted, promptly construct and operate, and (2) deny the "Opposition To Rulemaking and Counter-Proposal" of WSB.

Respectfully Submitted

Terry A. Cowan

BY


Leonard S. Joyce

His Counsel

Law Offices of Leonard S. Joyce
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015

October 4, 1994

William L. Zawila
ATTORNEY AT LAW

239
APPENDIX A

12550 BROOKHURST STREET
GARDEN GROVE, CALIFORNIA 92640
(714) 636-5040

March 22, 1994

RECEIVED

Secretary
Federal Communications Commission
1919 "M" Street, N.W.
Washington, D.C. 20554

FCC - MAIL ROOM

Re: Radio Station KWSA(AM), West Klamath, OR
Radio Station KCHQ(FM), Altamont, OR
Notice That Stations Remain Off-The-Air

Secretary:

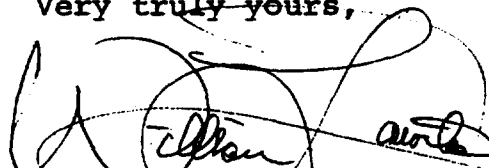
On behalf of Western States Broadcasting, Inc., licensee of Radio Station KWSA(AM), West Klamath, Oregon, and permittee of Radio Station KCHQ(FM), Altamont, Oregon, I am writing to advise that these two stations remain off-the-air at this time. Western States Broadcasting, Inc. has previously notified the Commission that these stations are dark.

As previously indicated, Western States Broadcasting, Inc. is attempting to solve the problems that caused KWSA(AM) and KCHQ(FM) to go off-the-air. However, these difficulties have not been remedied at this time and the exact date of return to air for these stations remains unknown. Western States Broadcasting, Inc. remains optimistic that KWSA(AM) and KCHQ(FM) will return to the air in the near future.

Please contact this office if you require any further information in this matter. We are submitting this letter in triplicate for Commission use.

WLZ/ds
encl (2)
cc: Chief, AM Branch
Chief, FM Branch
EIC, Portland

Very truly yours,



WILLIAM L. ZAWILA, President
Western States Broadcasting, Inc.

AM BRANCH

MAR 28 1994

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APPENDIX B

239

JUN 23 1994

FCC FILED

JUN 23 3 51 PM '94

In Reply Refer To:
8910 - SML
Stop Code 180082

William L. Zawila, President
Western States Broadcasting, Inc.
12550 Brookhurst Street
Garden Grove, CA 92640

In re: KWSA (AM)
West Klamath, Oregon

Dear Sir or Madame:

This letter concerns your pending request for authority to remain silent. Temporary authority is hereby granted for the above-referenced station(s) to remain silent for three months from the date of this letter.

On December 11, 1991, the Commission adopted a Report and Order (copy attached) which amended Part 1 of the Commission's Rules, to implement Section 5301 of the Anti Drug Abuse Act of 1988. Pursuant to the Report and Order, any requests for extension of this authority must be accompanied by a certification that neither the applicant nor any party to the request is subject to a denial of Federal benefits under Section 5301. Please use the attached certification page to comply with this requirement.

Any further requests for extension of this authority must be accompanied by a detailed summary of steps taken to return the station to on-air operations.

It will be necessary to maintain prescribed tower lighting in accordance with the station's license authorization. If an extension is not required, you are requested to notify the Commission, in writing, of the exact date the station resumes on-air operations.

In the event that any AM station remains silent for a period over 6 months, it will be necessary to file with the Commission, prior to returning the station to on-air operations, an FCC Form 302 for direct measurement of power which should include a partial proof of performance for stations with directional antennas.

Sincerely,



James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

Attachments

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

May 20, 1994

In Re Reply To:
1800B3-GDG

Western States Broadcasting, Inc.
c/o William L. Zawila, President
12550 Brookhurst Street
Garden Grove, Ca. 92640

In re: KCHQ (FM) Altamont, Oregon
Notification of Station Silence

Dear Licensee:

This letter concerns your notification, dated April 28, 1994, that FM Station KCHQ "remains off-the-air at this time."

In your March 22, 1994 letter, you indicated both KCHQ (FM) and KWSA (AM) discontinued operations. Your current letter makes no mention whether the AM facility resumed operations or remains silent to date. Further, Section 73.1740(a)(4) permits commercial AM and FM stations to remain silent for a period not to exceed thirty days, contingent upon notification to this agency no later than the tenth day of such silence. Stations seeking to remain silent beyond this thirty-day period must request special temporary authority to remain off-air. See Section 73.1635 of the Commission's Rules.

If you seek such authority, please detail both the continuing necessity for the station's silence and those steps proposed to resolve the station's problems. Certification (suggested format enclosed) regarding Section 5301 of the Anti-Drug Abuse Act of 1988 must accompany any request for special temporary authority.

You are therefore required to clarify this matter, in writing, within thirty days of the date of this letter. If you have any questions regarding the matters addressed above, please contact Glenn Greisman, Industry Analyst, at (202) 632-3954.

Sincerely,

for Dennis Williams

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

Enclosure

APPENDIX D

William L. Zavila
ATTORNEY AT LAW

RECEIVED

AUG 10 11 04 AM '94

12550 BROOKHURST STREET
GARDEN GROVE, CALIFORNIA 92640
(714) 636-5040

FM BRANCH

July 29, 1994

Secretary
Federal Communications Commission
1919 "M" Street, N.W.
Washington, D.C. 20554

Re: Radio Station KCHQ (FM), Altamont, OR
Letter of May 20, 1994, From Dennis Williams, Chief, FM Branch
Enclosed Anti-Drug Abuse Act Certification
Reply No.: 1800B3-GDG

Secretary:

With respect to your correspondence of May 20, 1994, regarding Radio Station KCHQ (FM), Altamont, Oregon, please be advised that this station remains off-the-air at this time. Regarding the points raised in your letter, the following is submitted on behalf of Western States Broadcasting, Inc.

Your letter inquires about the status of Radio Station KWSA (AM), also owned and operated by Western States Broadcasting, Inc. The Commission recently granted an STA to Western States Broadcasting, Inc. for KWSA (AM) to remain silent. This was granted by the AM Branch after submission of an Anti-Drug Abuse Act Certification similar to the one enclosed with this letter to cover KCHQ (FM). KWSA (AM) is currently off-the-air.

With regard to KCHQ (FM), enclosed is the Anti-Drug Abuse Act Certification that you have requested in connection with KCHQ (FM).

Regarding KCHQ (FM) being off-the-air, the station is dark due to a combination of financial and equipment problems. Due to numerous equipment problems which were in part caused by an earthquake that affected the area where KCHQ (FM) is located, Western States Broadcasting, Inc. was unable to continue with operation of the station. Along with the equipment problems, Western States Broadcasting, Inc. has experienced severe financial problems which have contributed to Western States' inability to resume broadcast operations at this time.

Western States Broadcasting, Inc. is currently attempting to financially reorganize its operation of KWSA (AM) and KCHQ (FM). Western States also is attempting to remedy the equipment problems that caused its stations to go dark.

William L. Zawila
ATTORNEY AT LAW

12650 BROOKHURST STREET
GARDEN GROVE, CALIFORNIA 92640
(714) 838-5040

Secretary-FCC
Page Two
July 29, 1994

We are submitting this letter in triplicate on behalf of Western States Broadcasting, Inc. along with the required Anti-Drug Abuse Act Certification.

Please contact this office if you require further information in this matter. Western States Broadcasting, Inc. hereby again renews its request for an STA to remain off-the-air with station KCHQ (FM).

WLZ/dz
encls (2)
cc: Dennis Williams, Chief
FM Branch

Very truly yours,

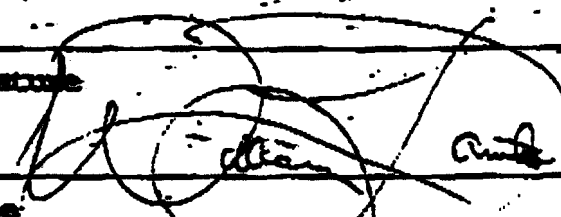

WILLIAM L. ZAWILA, President
Western States Broadcasting, Inc.

ANTI-DRUG ABUSE ACT CERTIFICATION

The applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a, or, in the case of a non-individual applicant (e.g. corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. § 1.2002(b).

☒ Yes

☐ No

Name of Applicant Western States Broadcasting, Inc.	Signature 
Date July 29, 1994	Title President



KLAMATH COUNTY CHAMBER OF COMMERCE

507 MAIN STREET
KLAMATH FALLS, OREGON 97601
TELEPHONE: 503/884-5193
FAX: 503/884-5195

Miranda Britton
Klamath County Chamber of Commerce

September 29, 1994

Mr. Leonard Joyce
5335 Wisconsin Ave. N.W.
Washington, DC 20015

Dear Mr. Joyce:

Thank you for your inquiry regarding that part of Klamath County sometimes referred to as "Altamont."

Altamont was once the sister town of Klamath Falls. When Klamath Falls was incorporated in 1893, Altamont got excited about incorporating, too, and between 1895 and 1904 there was a real push toward that end. It never happened. According to the Klamath County Museum, Altamont was last treated as a separate entity in 1907. After that it was referred to by residents and in newspaper articles as "south of Klamath Falls."

Eventually the two areas grew together and are now collectively known as "Klamath Falls," even though the Altamont area has never been annexed. Today that area is referred to by local residents as the "South Suburbs," although the Federal government, in the form of the census bureau, still considers it a separate entity. It has no post office (although it had one between 1895 and 1902) and no government structure of its own.

I hope this information is helpful to you. Please feel free to contact the Chamber if you have further questions. Inquiries of an historical nature might best be directed to the Klamath County Historical Society, 1451 Main Street, Klamath Falls, Oregon 97601.

Sincerely,



Miranda Britton

CERTIFICATE OF SERVICE

I, Snowdeen Dove, a secretary in the Law Offices of Leonard S. Joyce, do hereby certify that the foregoing Reply Comments of Terry A Cowan was served this 4th day of October, 1994, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

John A. Karousos
Acting Chief, Allocations Branch
Mass Media Bureau
2025 M Street, N.W.
Room 8322
Washington, D.C. 20554

Leslie K. Shapiro
Allocations Branch
Mass Media Bureau
2025 M Street, N.W.
Room 8313
Washington, D.C. 20554

William L. Zawila, Esq.
12550 Brookhurst Street
Suite A
Garden Grove, CA 92640
Counsel for Western States Broadcasting Inc.

/s/ Snowdeen Dove
Snowdeen Dove